

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 EA-10 ISO-00 AID-05 CEA-01 CIAE-00

COME-00 FRB-01 INR-07 NSAE-00 CIEP-02 SP-02 STR-04

TRSE-00 LAB-04 SIL-01 SAM-01 OMB-01 DODE-00 DOTE-00

FMC-02 CG-00 OFA-01 DLOS-04 L-03 SS-15 NSC-05 AGR-10

IO-10 OIC-02 /111 W

----- 097512

R 271913Z JUN 75

FM USMISSION EC BRUSSELS

TO SECSTATE WASHDC 9158

INFO ALL EC CAPITALS 833

AMEMBASSY CANBERRA

AMEMBASSY MADRID

AMEMBASSY TOKYO

AMEMBASSY ANKARA

AMEMBASSY ATHENS

AMEMBASSY BERN

AMEMBASSY HELSINKI

AMEMBASSY LISBON

AMEMBASSY OLSO

AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

AMEMBASSY VIENNA

AMEMBASSY WELLINGTON

AMCONSUL HAMBURG

UNCLAS SECTION 1 OF 2 EC BRUSSELS 05850

E.O. 11652: N/A

TAGS: ETRN, UNCTAD, EEC

SUBJECT: UN CODE OF CONDUCT FOR LINER CONFERENCE AND THE EC

REF: A) PARIS 16618 B) BONN 10371 C) EC BRUSSELS 5746

D) EC BRUSSELS 5555

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1. SUMMARY: US LINER CODE DISCUSSION IN THE COMMITTEE OF

PERMANENT REPRESENTATIVES AND COUNCIL WORKING GROUPS WILL NOW FOCUS ON A DRAFT COUNCIL DECISION AUTHORIZING THE COMMISSION AND MEMBER STATES TO NEGOTIATE BILATERALLY WITH THIRD COUNTRIES CERTAIN RESERVATIONS AND AMENDMENTS WHICH COULD MAKE IT POSSIBLE FOR THE MEMBER STATES AND THE EC TO ADHERE TO THE CODE. THE PROPOSED RESERVATION AND AMENDMENT ARE REPRODUCED BELOW. THE COMMISSION WOULD LIKE TO SE AN "ADVANCE REVIEW CONFERENCE" ON THE CODE FOLLOWING BILATERAL NEGOTIATIONS. END SUMMARY

2. REFTELS A AND B CONFIRM OUR INFORMATION THAT, ALTHOUGH COMMISSION VICE PRESIDENT SOAMES SPOKE STRONGLY AT THE JUNE 24 EC COUNCIL MEETING AGAINST MEMBER STATES SIGNING THE UN LINER CODE, EVEN WITH RESERVATIONS, GERMAN⁶, FRANCE, AND BELGIUM DEFENDED THEIR INTENTION TO SIGN THE CODE. AN OFFICIAL OF THE COMMISSION TRANSPORTATION DIRECTORATE GENERAL TOLD US THAT THE COMMISSION WILL TAKE THE MEMBER STATES WHO SIGN TO THE EUROPEAN COURT AND HE BELIEVES THAT THE COMMISSION WILL HAVE NO DIFFICULTY IN WINNING THE CASE. HOWEVER, THE LEGAL PROCEDURES ARE SLOW SO A FINAL DECISION WILL TAKE QUITE SOME TIME.

3. AS REPORTED IN REFTEL C, THE EC COUNCIL HAS SENT THE ISSUE OF THE LINER CODE BACK TO THE COMMITTEE OF PERMANENT REPRESENTATIVES. THE FOCUS OF DISCUSSION WILL NOW BE ON THE COMMISSION'S "PROPOSAL FOR A COUNCIL DECISION (NOT DECLARATION AS REPORTED IN REFTEL D). CONCERNING THE OPENING OF NEGOTIATIONS IN RESPECT OF THE UNITED NATIONS CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES". (A COPY OF THIS PROPOSAL HAS BEEN AIR POUCHED TO EUR/RPE AND US OECD).

4. THE PROPOSAL CONTAINS AN EXPLANATORY MEMORANDUM, THE PROPOSED DECISION ITSELF AND AN ANNEX WITH PROPOSED NEGOTIATING DIRECTIVES ON RESERVATIONS AND AMENDMENTS TO THE CONVENTION. UNDER ARTICLE I OF THE PROPOSED DECISION "THE COMMISSION IS AUTHORIZED TO, AND MEMBER STATES SHALL, ACTING IN COMMON TOGETHER WITH THE COMMISSION, OPEN NEGOTIATIONS REGARDING THE UN CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES TO PERMIT ACCESSION OF THE COMMUNITY AND MEMBER STATES. THESE NEGOTIATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE DIRECTIVES

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ANNEXED TO THIS DECISION. THE COMMISSION SHALL COONDUCT THE NEGOTIATIONS FALLING WITHIN ITS COMPETENCE IN CONSULTATION WITH THE SPECIAL COMMITTEE REFERRED TO IN ARTICLE 113 (OF THE ROME TREATY)."

5. THERE ARE TWO TYPES OF NEGOTIATIONS THE COMMISSION HAS IN MIND. IN THE FIRST INSTANCE THE COMMISSION AND MEMBER STATES WILL NEGOTIATE BILATERALLY WITH THIRD COUNTRIES (UNNAMED BUT

WE UNDERSTAND BOTH LDCS AND DCS) TO TEST OUT THE ACCEPTABILITY OF PROPOSED RESERVATIONS AND AMENDMENTS TO THE CODE. IF BILATERAL NEGOTIATIONS SHOW THE ADVANTAGE OF AN "ADVANCE REVIEW CONFERENCE" ON THE CODE, THE COMMISSION WOULD SUGGEST THAT AN "ADVANCE REVIEW CONFERENCE" BE CONVENED UNDER THE AUSPICES OF THE UN AND THAT IT NOT BE DELAYED UNTIL THE END OF THE FIVE-YEAR PERIOD REQUIRED BY ARTICLE 52 OF THE CODE. ON THE BASIS OF THE RESULTS OF THE NEGOTIATIONS, THE COMMISSION WILL SEND A PROPOSAL FOR A DECISION TO THE COUNCIL CONCERNING POSSIBLE ADHESION OF THE MEMBER STATES AND THE COMMUNITY.

6. THE OTHER OPERATIONAL ARTICLE, ARTICLE II, WHICH CALLS UPON MEMBER STATES TO "REFRAIN FROM SIGNING, RATIFYING OR ACCEDING TO THE CONVENTION UNTIL THE COUNCIL DECIDES ON THE ACTION TO BE TAKEN HAVING REGARD TO THE OUTCOME OF THE NEGOTIATIONS" IS IN PART MOOT, SINCE THREE MEMBER STATES HAVE DECIDED TO SIGN THE CONVENTION. THEY HAVE AGREED, HOWEVER, TO WITHHOLD RATIFICATION PENDING EC DISCUSSIONS.

7. THE PROPOSED DIRECTIVES FOR NEGOTIATION LIST SEVEN RESERVATIONS AND AMENDMENTS TO THE CONVENTION WHICH SHOULD BE NEGOTIATED BILATERALLY AND IN AN "ADVANCE REVIEW CONFERENCE". THESE ARE: A) FOR THE PURPOSE OF APPLYING THE CODE OF CONDUCT TO LINER CONFERENCES ENGAGED IN THE EXTERNAL TRADE OF THE COMMUNITY, ANY SHIPPING COMPANY FORMED IN ACCORDANCE WITH THE LAW OF A MEMBER STATE AND HAVING ITS REGISTERED OFFICE, CENTRAL ADMINISTRATION OR PRINCIPAL PLACE OF BUSINESS WITHIN THE COMMUNITY SHALL BE REGARDED AS A "NATIONAL SHIPPING LINE" WITH RESPECT TO ANY LINER CONFERENCE ENGAGED IN THE EXTERNAL TRADE OF ONE OR MORE MEMBER STATES.

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R 271913Z JUN 75
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INFO ALL EC CAPITALS 834
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UNCLAS SECTION 2 OF 2 EC BRUSSELS 5850

B) SEA-BORNE TR OTLN MMOR TT #ON THE EUROPEAN

ECONOMIC COMMUNITY SHOULD BE EXCLUDED FROM THE APPLICATION
OF THE CODE OF CONDUCT.

C) FOR THE PURPOSE OF APPLYING THE PROVISIONS OF THE CODE
TO LINER CONFERENCES ENGAGED IN THE EXTERNAL TRADE OF THE COM-
MUNITY, ANY AGREEMENT BETWEEN THE MEMBERS OF A CONFERENCE
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OR BETWEEN THE MEMBERS OF A CONFERENCE AND A SHIPPER (OR OR-
GANIZATION OF SHIPPERS) AND ANY DECISION OR ACTION TAKEN BY
A CONFERENCE OR ITS MEMBERS SHALL REMAIN SUBJECT, WHERE APPRO-
PRIATE, TO THE RULES OF THE TREATY ESTABLISHING THE EUROPEAN
ECONOMIC COMMUNITY AND TO COMMUNITY LEGISLATION. THE RECOMMEN-
DATIONS OF CONCILIATORS CONCERNING ANY DISPUTE REFERRED TO COM-
PULSORY INTERNATIONAL CONCILIATION SHALL BE MADE IN ACCORDANCE
WITH THE PROVISIONS OF THE CODE AND, WHERE APPROPRIATE, IN ACCOR-
DANCE WITH COMMUNITY LAW.

D) THE PROVISIONS OF THE CODE OF CONDUCT CONCERNING MEMBER-
SHIP OF CONFERENCES AND PARTICIPATION IN TRADE (CH. II) SHOULD
BE MODIFIED AS CONCERNS LINER CONFERENCES ENGAGED IN THE EXTERNAL
TRADE OF THE COMMUNITY IN ORDER TO AVOID THE CREATION OF OBSTA-
CLES IN TRADE, TAKING ACCOUNT OF THE PARTICULAR NEEDS OF DE-
VELOPING COUNTRIES.

E) FOR THE PURPOSE OF APPLYING THE PROVISIONS OF CHAPTER
IV, ARTICLE 14 PARAGRAPH 9 TO CONFERENCES ENGAGED IN THE EX-
TERNAL TRADE OF THE COMMUNITY, THE RULE PROVIDING FOR A MINIMUM

PERIOD OF AT LEAST TEN MONTHS BETWEEN THE DATE WHEN ONE GENERAL FREIGHT RATE INCREASE BECOMES EFFECTIVE AND THE DATE OF NOTICE FOR THE NEXT GENERAL FREIGHT RATE INCREASE SHALL BE RELAXED BY INTRODUCING THE NOTION THAT THIS PERIOD MAY BE SHORTENED WHERE SHIPPING LINES ARE AFFECTED BY EXCEPTIONAL INCREASES IN COSTS.

F) SIMPLIFY AND IMPROVE THE PROVISIONS OF THE CODE RELATING TO THE SETTLEMENT OF DISPUTES.

G) AMENDMENTS TO PERMIT THE COMMUNITY TO BECOME A CONTRACTING PARTY AND CONSEQUENTIAL AMENDMENTS. GREENWALD

NOTE BY OC/T: EC BRUSSELS 5850/2. #AS RECEIVED.
CORRECTION TO FOLLOW.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: STANDARDS, SHIPS, TREATY RATIFICATION, MARITIME MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 27 JUN 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975ECBRU05850
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750224-0525
From: EC BRUSSELS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t1975067/aaaaafhb.tel
Line Count: 235
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 PARIS 16618, 75 BONN 10371, 75 EC BRUSSELS 5746
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 28 FEB 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <28 FEB 2003 by PhilliR0>; APPROVED <03 FEB 2004 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: UN CODE OF CONDUCT FOR LINER CONFERENCE AND THE EC
TAGS: ETRN, UNCTAD, EEC, OECD
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006